

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED EMERGENCY REGULATIONS

Title 3, California Code of Regulations

Inspection and Permitting of Bulk Milk Tankers

INITIAL STATEMENT OF REASONS

As required by section 11346.2 of the Government Code, the Department of Food and Agriculture (Department) sets forth below the reasons for the proposed adoption of section 480.9, and amendment of section 300(c)(1) in Title 3, California Code of Regulations (CCR).

SPECIFIC PURPOSE OF THE REGULATIONS

This proposed adoption of Section 480.9 will establish the requirements for milk tanker inspections, and method of issuing permits for milk tankers. This regulation will meet and implement requirements of the National Conference on Interstate Milk Shipments ("NCIMS") for inspection and permitting of bulk milk tankers in California to ensure that the California milk regulatory program is in compliance with US Public Health Service/Food and Drug Administration ordinances, and to permit \$12 billion in annual value of California milk and milk products to move freely in interstate commerce.

The proposed amendment of Section 300(c)(1) will establish permit reform act required time frames for Bulk Milk Tanker Permits of sixty (60) days as the maximum time for notifying that an application is complete or deficient and as ninety (90) days for the maximum time after receipt of a complete application for the Department to approve or deny a permit.

NECESSITY

The proposed regulation springs from a state program evaluation from the United States Food and Drug Administration. The California Department of Food and Agriculture, Milk and Dairy Foods Control Branch, has received notification that it has been found in substantial non-compliance with the National Conference on Interstate Milk Shipments (NCIMS) guidelines regarding implementation of the Bulk Milk Tanker Inspection Program. The Department must remedy this problem by adopting emergency regulations to implement this program, providing California milk and dairy products continued access to the US domestic marketplace. California currently produces over 19 percent of the nation's milk and dairy products supply.

The Department has also recently received notification from the State of Indiana that California milk and milk products will no longer be accepted in that state contained in milk tankers not bearing a permit after mid-November 2001.

On September 26, 2001, California's non-compliance was brought before the NCIMS Executive Board for consideration of sanctions, including exclusion of California milk and milk products from interstate commerce. The Department must implement tanker inspections immediately to avoid sanctions by NCIMS as non-compliant with interstate milk shipment requirements; therefore, these regulations must be in place no later than October 30, 2001. These regulations

are necessary to protect public health. Adoption of these regulations is necessary to ensure the state's compliance with NCIMS requirements for interstate shipments and ensure the marketability of California dairy products.

The National Conference on Interstate Milk Shipments (NCIMS) is a cooperative program of the United States Public Health Service/Food and Drug Administration, the States, and dairy industry. Actions of the NCIMS ensure protection of the public health by establishing minimum regulatory requirements to assure a safe and wholesome supply of milk and milk products. State dairy regulatory authorities agree to adopt NCIMS requirements in order to have Grade A milk and milk products move freely in interstate commerce.

The US Public Health Service/ Food and Drug Administration publishes actions of the NCIMS conference, establishing inspection criteria for dairy equipment and facilities in the Pasteurized Milk Ordinance (PMO). This Ordinance includes definitions of Grade A milk products, prohibits the sale of adulterated milk and milk products, requires permits for the sale of milk and milk products, regulates the inspection of dairy farms and milk processing plants and the pasteurization, processing, packaging, labeling and distribution of milk and milk products. The Ordinance establishes minimum construction requirements for dairy farms and milk processing plants, and contains enforcement and penalty of provisions.

A new permit will be created from the proposed regulation. To establish the deadlines required by the Permit Reform Act, thereby establishing the emergency adoption of proposed Section 480.9, Inspection and Permitting of Bulk Milk Tankers, it is necessary to amend Section 300(c)(1) of the CCR.

The deadlines are designed to ensure the timely and efficient handling of requests for permits and for permit renewals. The Department is proposing a time frame of 60 days for complete/deficient notification because applications may arrive during a period of calendar year renewals for other permits and licenses, and 60 days would allow for reasonable and timely response. The Department is proposing a time frame of 90 days for the approval/denial of the permit and permit renewal. This time frame will allow the Department, in a timely manner, to schedule and conduct the inspection of the tanker for which the permit is requested. No historical record exists for the actual days to process these applications because these permits will be a new requirement.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Department relied upon the following studies, reports, and documents in the adoption of Section 480.9:

1. Grade "A" Pasteurized Milk Ordinance, 1999 Revision, US public Health Service/Food and Drug Administration Publication 229, pages: i, v, 97, 101 - 106.
2. Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 1999 Revision, pages: v, 6, 7, 20.
3. California Department of Food and Agriculture, Milk and Dairy Foods Control Branch, Grade "A" IMS Program FY 1999-2000 Biennial State Evaluation, dated July 25, 2001, pages: 3, 4, 14, 15, 21.

4. US Public Health Service coded Memorandum IMS-a-42, Actions of the 1999 National Conference on Interstate Milk Shipments, pages: 1, 5, 6, 28.
5. California Department of Food and Agriculture, Dairy Marketing Branch publication "California Dairy Statistics 2000", pages: 2, 3, 19, 12 - 25.

The Department did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing amendment of Section 300(c)(1).

REASONABLE ALTERNATIVES

No alternatives considered by the Department would be more effective in carrying out the purpose for which the regulations are proposed.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department has not identified any alternatives that would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small business.